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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,619	03/13/2006	David Adderton	043757	4800
615 7590 07/24/2009 THE MAXHAM FIRM 9330 SCRANTON ROAD, SUITE 350 SAN DIEGO, CA 92121				
EXAMINER MACARTHUR, VICTOR L				
ART UNIT 3679		PAPER NUMBER		
MAIL DATE 07/24/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Interview Summary

**Application No.**

10/571,619

**Applicant(s)**

ADDEYTON, DAVID

**Examiner**

VICTOR MACARTHUR

**Art Unit**

3679

All participants (applicant, applicant's representative, PTO personnel):

(1) VICTOR MACARTHUR.

(3) \_\_\_\_\_.

(2) LAWRENCE MAXHAM.

(4) \_\_\_\_\_.

Date of Interview: 22 July 2009.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal (copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: 1 and 7.

Identification of prior art discussed: Bailey USPN 5452880.

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

/Victor MacArthur/  
Primary Examiner, Art Unit 3679

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

#### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

#### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

Applicant argued that the Finality of the Office Action mailed 2/17/2009 was improper since the amendment filed 12/10/2008 was not substantial enough to require new grounds of rejection. The examiner disagreed. In fact the amendment filed 12/10/2008 added the new limitation "the first rail portion, and a second arm fitting wholly or substantially within the recessed channel of the second rail portion" (claim 1) and the new limitation "the locking means comprising an upper portion of the insert defining a through hole and a lower portion of the insert defining a threaded hole for receiving a thread on the shaft, the through hole and shaft sized to provide relative clearance" (claim 7). Applicant has failed to point out how these new limitations did not further limit the claims much less why such amendment would not require new grounds of rejection. In fact, applicant's remarks filed 12/10/2008 specifically argue on p.8 that these new limitations overcome the previous Office Action grounds of rejection. Therefore, applicant's amendment clearly necessitated the new grounds of rejection.

The examiner briefly reiterated what was stated in the previous interview held on 7/22/2009, stating that an initial filing of broad unclear claims does not give applicant immunity to a holding of finality under new grounds necessitated by applicant's subsequent amendment.

Applicant proposed an additional amendment (see attachment).

The examiner stated that claim 7, as proposed, broadly claimed only the connection structure such that the rails, post, internal walls, etc. were mere intended use. Accordingly, the examiner stated that the proposed version of claim 7 would likely be met with further rejection, possibly under new grounds, if filed under RCE since such hinge stopper structure is common outside of the fence art.

The examiner asked applicant to point out the novelty of the newly proposed version of claim 1, which more narrowly recited the rail and panel structure. The applicant's representative stated that Baily did not have a panel supported at a top edge thereof within a recessed channel of the a first rail. The examiner pointed to figure 15 of Bailey which shows overlapping arms (16, 17, 138) which are received in a channel of rail (132). The examiner further pointed to figure 18 which also appeared to show this feature of claim 1. Applicant disagreed that figures 15 and 18 showed this feature. The examiner suggested that applicant might be disagreeing since applicant's overlapping arms (51 and 56 as seen in applicant's figure 1) are each of homogenous one-piece construction whereas each arm of Baily has multiple pieces. However, the examiner noted that applicant's claims make no such "homogenous" requirement. The examiner reminded applicant that limitations cannot be read into the claims from the written description or drawings. Rather applicant has a responsibility to clearly set forth the protection being sought in the claims. The examiner further noted that elements (16 and 17) appear to be readable as arms received within channel of rail (132) such that even if "homogenous one-piece construction" of the arms were amended into the claims, Baily would still read thereon. The applicant again disagreed that Baily disclosed the invention but did not advance any further specific argument as to why.

The examiner suggested either further amending the claim to overcome the prior art in an RCE, or if a narrower scope is unacceptable either appealing or abandoning the case.